

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: FEBRUARY 14, 2008

Pirthi Singh

.....Petitioner

VERSUS

Bhagwan Dass and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Ashish Aggarwal, Advocate,
for the petitioner.

Mr. Jagdish Manchanda, Advocate,
for the respondents.

RANJIT SINGH, J.

Prayer is of setting-aside of the order rejecting the objection petition filed by the petitioner by the Executing Court.

A decree dated 24.9.1991 is passed in favour of the petitioner. The petitioner thereafter filed an execution application and possession of the land was delivered in his favour on 23.1.2003. The execution petition was accordingly dismissed on 29.3.2003 as having been fully satisfied. The decree in favour of the petitioner was challenged by one Bhagwan Dass in a separate suit on 1.6.1993. This suit was, however, dismissed as withdrawn on 4.11.1999.

Another suit was filed by Madan Lal Vs. Deva Ram, which was decreed on 15.11.1990. The possession of the suit land was delivered to respondent No.2, Madan Lal. In execution of a decree dated 15.11.1990 in favour of Madan Lal (respondent No.2), Bhagwan Dass, respondent No.1, filed objections, though he was not a party to the said suit, alleging that the suit land comprised of Rectangle No.462, Killa No.13, was for 3 kanals, whereas in execution, the possession of entire Killa No.13 i.e. 8 kanals was delivered in favour of the decree holder. This 5 kanals of land is the same, possession of which was delivered in execution of a decree dated 24.9.1991, which had been challenged by Bhagwan Dass himself by way of a separate suit but had got the same dismissed as withdrawn as already noticed. Though Bhagwan Dass has admitted possession of the petitioner over this 5 kanals of land but concealed this fact of earlier proceedings while filing objection to the execution proceedings of the decree in favour of respondent No.1. He, thus, obtained an order of restoration of possession of 5 kanals of land, claiming himself to be the co-owner. When respondent No.1 applied for issuance of warrant of possession, the petitioner came to know about the above proceedings and filed objections on 22.7.2003, bringing out all the facts as afore-mentioned. These objections have now been dismissed, which are impugned through the present revision petition.

I have heard the learned counsel for the parties.

Mr.Ashish Aggarwal, counsel appearing for the petitioner, is justified in saying that the objections filed by the petitioner could not have been dismissed as not maintainable and a fact that

respondent No.1-Bhagwan Dass had earlier filed a suit qua the same land against the petitioner, which was got dismissed as withdrawn on 4.11.1999 can not be ignored. This fact would show that respondent No.1 was fully aware of decree in favour of the petitioner i.e. Annexure P-1, which he has challenged by filing a suit, copy of which is annexed as Annexure P-3. This suit was withdrawn after six years of its institution. This fact was required to be disclosed by respondent No.1 in the subsequent proceedings that took place in the year 1997-98. This aspect of the objections raised by the petitioner in this background could not have been summarily rejected as has been done by the Executing Court. The counsel for the petitioner refers to the provisions of Order 21 Rule 101 CPC, providing that all questions including that of right, title or interest in the property between the parties to the proceedings, on an application, under Rule 97 or Rule 99 of Order 21 CPC, are to be determined by the courts dealing with the execution application and not through a separate suit for this purpose.

The reliance placed by Mr.Manchanda, appearing for the respondents, on the order passed by Additional District Judge, Karnal, allowing the appeal of respondent No.1, which has been upheld by this Court would be confined to the facts of the case inter-se the respondents. No rights of the petitioner were adjudicated in the said proceedings. In fact, Bhagwan Dass, respondent No.1, in fairness, was required to disclose the facts of his filing a suit and decree in favour of the petitioner, which is prior in time to the decree which was subject matter of litigation inter-se the respondents where this Court had dismissed the revision petition. It would be, thus,

appropriate for the Executing Court to re-consider the objection petition filed by the petitioner in the light of above-noted facts. The impugned order passed by the Executing Court can not be sustained. The same is hereby set-aside and the case is remanded back to the Executing Court (Civil Judge (Junior Division), Karnal) to re-consider the objections filed by the petitioner and decide the same in accordance with law by following the procedure as prescribed in Order 21 Rule 101 CPC and other relevant provisions.

The petition is allowed in the above terms.

February 14 ,2008

Khurmi

**(RANJIT SINGH)
JUDGE**